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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948 1959

No. 12, Original 6

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE STATE OF CALIFORNIA

REPORT OF SPECIAL MASTER

New York, New York,
May 31, 1949.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948.

No. 12, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE STATE OF CALIFORNIA

REPORT OF SPECIAL MASTER

By Order of the Court of February 12, 1949 appointing me Special Master, I was requested to make recommendations to the Court, with all convenient speed, as to what particular portions of the boundary call for precise determination and adjudication, and if I should conclude that such adjudication should be made, then I was also authorized to recommend to this Court an appropriate procedure to be followed in determining the precise boundary of such segments.

Coastal Segments Recommended

I recommend to the Court precise determination and adjudication of the following particular portions of the boundary:

Group 1

The three segments of the California coast specified in the Government's petition for supplemental decree (filed

January 29, 1948) (a) beginning at Point Conception and extending to Point Hueneme (Coast & Geodetic Survey Chart 5202); (b) San Pedro Bay (Chart 5147); and (c) the coast line from the southern extremity of San Pedro Bay to the western headland at the entrance to Newport Bay (Chart 5101).

Group 2

The four segments proposed by California (Trial Brief Before the Master, April 21, 1949; Exhibits 7, 10, 11 and 12) and identified as (a) Crescent City Bay (Chart 5895); (b) Monterey Bay (Chart 5402); (c) San Luis Obispo Bay (Chart 5386) and (d) Santa Monica Bay (Chart 5101).

Comment

As to Group 1 above, the parties are in agreement that these three particular portions of the boundary call for precise determination and adjudication at this time. The Government has contended, ever since the filing of its petition for a supplemental decree on January 29, 1948, that no other segments now require adjudication. California, agreeing that there is need for prompt determination of the boundaries of these three segments, petitioned (Answer to Petition for Entry of Supplemental Decree, filed February 24, 1948) for a prompt determination of the precise California coastal boundary all the way from Oregon to Mexico. California's petition was denied on June 21, 1948 (334 U. S. 855). Judge Groner, having been appointed Special Master, California submitted to him a list of 104 coastal segments requiring adjudication. (See Exhibit 1 of the Trial Brief submitted to me, dated April 21, 1949). On October 27, 1948, in a letter to Judge Groner, California selected from these 104 segments six segments as to which it asked immediate precise determination and adjudication. The four segments recommended for adjudication

in Group 2 above are four of these six segments. Two, Arcata-Humboldt Bay (Exhibit 8, Chart 5602) and Bodega-Tomales Bays (Exhibit 9, Chart 5502) have been omitted from my recommendation.

I have not been able to accept the Government's contention that only the boundaries of the three segments of Group 1 above should be determined and adjudicated at this time. It has seemed to me that a wiser and fairer procedure would be to make now an intelligent selection adequate to present in reasonably significant variety the principal questions that will have to be decided before particular boundary lines or locations can be precisely determined.

Precise determination of any portion of the boundary (whether an extended boundary line or the locus of a point, such as a particular oil well) is a surveying job in execution of a preliminary judgment fixing criteria. Final adjudication of the exact locus of a line or point, if or when such an exact adjudication might become necessary, would presumably be effected by the Court's confirmation of a directed survey and the entry of an appropriate decree (Cf. *New Jersey* v. *Delaware,* 295 U. S. 694; *Oklahoma* v. *Texas,* 261 U. S. 340). It may be, I suppose, that an adjudication of criteria of low-water mark, etc. may make any subsequent more exact determination unnecessary. In the instant situation I find that no such survey can be made until there has been judicial determination of three questions:

(a) By what criteria is "the ordinary low-water mark on the Coast of California" to be ascertained;

(b) Are particular segments in fact bays or harbors constituting inland waters and from what landmarks are the lines marking the seaward limits of bays, harbors, rivers and other inland waters to be drawn;

(c) What is the status (inland waters or open sea) of particular channels and other water areas between the mainland and offshore islands, and, if inland wa-

> ters, then by what criteria are the inland water limits of any such channel or other water area to be determined.

Each of the recommended segments will present a particular example of Question (a) above. The applicable criteria lend themselves, it would seem, to broadly inclusive generalization (Cf. *Borax, Ltd.* v. *Los Angeles*, 296 U. S. 10).

As to Question (b) above, whether a particular coastal indentation is in fact a bay or harbor constituting inland water will, I suppose, have to be adjudicated and fixed by decree of this Court for each case in which that question remains a matter of dispute. (Cf. *Oklahoma* v. *Texas*, 261 U. S. 340; 265 U. S. 500.) The segments listed in Group 2 above present that question in a variety of aspects and not, I think, in excessive number. It seems reasonable to suppose that the development and the application of criteria in the recommended areas might be expected to lead to generalizations applicable without too much difficulty to other areas. The determination of land-marks from which the lines marking the seaward limits of bays and harbors are to be drawn, is presented in considerable variety in the areas included in Group 1 and also in the areas included in Group 2. Because of this, I have not included Arcata-Humboldt Bays (Exhibit 8, Trial Brief of State of California of April 21, 1949) or Bodega-Tomales Bays (Exhibit 9) in my recommendations. As to them, the Solicitor General, in a letter to me of May 9, 1949, says:

> "In the case of Humboldt Bay, Bodega Harbor and Tomales Bay (the latter two areas being the significant portions of the Bodega and Tomales segments), the dispute would seem to be formal in character, awaiting only an agreement by the parties as to the status of the areas as inland waters."

Thus, in these two segments, as in the areas of San Francisco Bay and San Pedro Bay covered by the stipulation of

July 26, 1947 (Appendix C of Decree Proposed by the United States, etc., filed September 13, 1947), the only question in dispute is the exact location of the line marking the seaward limit of the bay or harbor. I see nothing to be gained by adding them now to the already-ample exemplifications of that problem. Here, too, the development and the application of criteria in the recommended areas should simplify the problem for other areas. It might well lead to subsequent agreement about, or at any rate to ready determination of, the boundary lines of these omitted bays.

As to Question (c) above, what is the status of particular channels and other water areas between the mainland and offshore islands and by what criteria the limits of inland waters in such areas are to be determined, is presented in Item (a) of Group 1, as that item is stated in the Government's petition for supplemental decree, and in further variety by the claim of California as to the extent of inland waters along that whole segment of the coast, from Point Arguello to Point Loma. (See Exhibit 13 of Trial Brief, dated April 21, 1949.)

Procedure Recommended

The duty imposed upon me by the Order of the Court precludes, for me, acceptance of the contention of California that the questions involved in the determination of these boundaries "are purely legislative in character" beyond the power of this Court (Cf. Opinion 4-5; 332 U. S. 19, 25-6). I proceed, therefore, to exercise the authority vested in me "to recommend to this Court an appropriate procedure to be followed in determining the precise boundary of such segments." I recommend:

That the Court appoint a master to take, with all convenient speed, such evidence as may be introduced as to the lines which in the said seven coastal segments divide the

areas underlying the Pacific Ocean described in Paragraph 1 of the Court decree of October 27, 1947 in which the United States is now, and has been at all times pertinent hereto, possessed of paramount rights and full dominion and power over the lands, minerals and other things and in which the State of California has no title or property interest from the areas lying landward of the ordinary low-water mark on the coast of California and within the inland waters of that State, and the proper mode of locating said lines, and report the same to the Court, but without findings or conclusions; the times and places of taking such testimony, and the order of taking the same, to be fixed by stipulation of the parties, and, if they shall fail to stipulate, to be fixed by the master; that the master be given discretion to direct the attorneys for the parties to appear before him for conference to consider, (1) a simplification of the issues; (2) the necessity or desirability of statements of the issues, and amendments thereto, in the nature of pleadings; (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof; (4) the limitation of the number of expert witnesses; and (5) such other matters as may aid in the disposition of the action, and to call for such evidence as he may deem necessary.

Many of the questions of ultimate fact and of law in these proceedings are, in my opinion, of such a nature that it would be inadvisable to entrust the master with the making of ultimate findings of fact or conclusions of law. If it should be the desire of the Court to have such findings or conclusions, then I would think it advisable not to impose the duty upon a master but to appoint a special court of federal judges.

It seems clear from the history of this case and from the statements submitted to me by the parties as to the kinds of evidence they expect to submit, that a great part, if not all, of the evidence can be submitted in documentary form

or in agreed or undisputed statements of fact as to physical and geographical factors and historical data. It is for this reason that I have recommended that the master be given specific authority to follow procedures analogous to the pre-trial procedures of Rule 16 of the Federal Rules of Civil Procedure. Otherwise, the recommended procedure follows the procedure adopted by this Court in *Oklahoma* v. *Texas*, 256 U. S. 602, 608-9 (Cf. 253 U. S. 465; 256 U. S. 70; 258 U. S. 574; 260 U. S. 606, 625; 261 U. S. 340; 265 U. S. 500).

Respectfully submitted,

WILLIAM H. DAVIS.

New York, New York, June 3, 1949.

UNITED STATES COAST AND GEODETIC SURVEY CHARTS OF THE COAST OF THE STATE OF CALIFORNIA

EXHIBIT A—Charts depicting the entire coastline of the State of California:

Chart No. 5052—The coastline from the Mexican border to San Francisco Bay.

Chart No. 5020—The coastline from San Francisco Bay to the Oregon line.

EXHIBIT B—Charts depicting the California coast specified in the Government's petition for supplemental decree:

Chart No. 5202—Beginning at Point Conception and extending to Point Hueneme.

Chart No. 5147—Detailed chart of San Pedro Bay.

Chart No. 5101—The coastline from the southern extremity of San Pedro Bay to the western headland at the entrance of Newport Bay.

EXHIBIT C—Charts depicting the four segments of the California coast proposed by California for immediate, precise determination and adjudication:

Chart No. 5895—Crescent City Bay.

Chart No. 5402—Monterey Bay.

Chart No. 5386—San Luis Obispo Bay.

Chart No. 5101—Santa Monica Bay. (See above under Exhibit B.)

EXHIBIT D—Charts depicting two segments of California coast proposed by California but rejected by the Special Master:

Chart No. 5602—Arcata-Humboldt Bay.

Chart No. 5502—Bodega-Tomales Bay.

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